

SIKKIM

GOVERNMENT



GAZETTE

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GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK.

No. 1/LD/1992.

Dated Gangtok, the 7th April, 1992.

NOTIFICATION

The following Act of the Sikkim Legislative Assembly having received the assent of the Governor on 27th day of March, 1992, is hereby published for general information.

THE SIKKIM HOME GUARDS ACT, 1992

(ACT NO. 1 OF 1992)

AN

ACT

to provide for the constitution of a voluntary organisation known as Home Guards for service in emergencies and for certain other purposes so as to inculcate habits of self-reliance and discipline among the people and to develop in them a sense of civic responsibility and for matters connected therewith or incidental thereto.

Be it enacted by the Legislature of Sikkim in the Forty-Third Year of the Republic of India as follows:—

*Short title,
extent and
commence-
ment.*

1. (1) This Act may be called the Sikkim Home Guards Act, 1992.
- (2) It extends to the whole of the State of Sikkim.
- (3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different districts.

Definitions.

2. In this Act, unless the context otherwise requires,—
 - (a) "Government" means the State Government of Sikkim;
 - (b) "Home Guard" means a person who is appointed as such under this Act;
 - (c) "prescribed" means prescribed by rules made under this Act.

*Constitution
of
Home
Guards and
appoint-
ment of
Commandant
General and
Commandant.*

3. (1) The Government shall, by notification in the Official Gazette, constitute for each district a volunteer body called the Home Guards, the members of which shall discharge such functions and duties in relation to the protection of persons, the security of property, the public safety and the maintenance of essential services as may be assigned to them in accordance with the provisions of this Act and the rules made thereunder.
- (2) The administration of Home Guards constituted under sub-section (1) for any district shall be vested in the Commandant, who shall be appointed by the Government and in any such Additional, Deputy or Assistant Commandants as the Government may deem fit to appoint.

- (3) The general supervision and control of Home Guards throughout the State shall vest in the Commandant General who shall be appointed by the Government and in any such Additional Commandants General/Divisional/ Deputy Commandants General or Assistant Commandants General as the Government may deem fit to appoint.

- (4) The Home Guards constituted for different districts in the State shall, for the purposes of this Act, be a single force and the members thereof shall be formally enrolled, and such force shall consist of such number of officers and men, and their qualifications and conditions of training and service shall be such as may be prescribed.

Appointment of Home Guards, forms of declaration and certificate of appointment as such.

4. (1) Subject to the approval of the Commandant General, the Commandant may appoint as Home Guards such number of persons who are fit and willing to serve as may, from time to time, be determined by the Government and may appoint any such person to any office of command in the Home Guards.
- (2) Notwithstanding anything contained in sub-section (1), the Commandant General may appoint any such person to any post under his immediate control.
- (3) A Home Guard shall, on appointment, make a declaration in the form specified in the First Schedule and receive a certificate of appointment in the form specified in the Second Schedule, under the seal and signature of such officer as may be prescribed.
- (4) Subject to any rules made in this behalf, a Home Guard shall be required to serve the Home Guard Organisation for a period of three years (including the period spent in training) which period may be extended by the Government to such further period as it may consider necessary, and a Home Guard shall thereafter serve in the Reserve force of Home Guards constituted as hereinafter provided for a period of three years and shall, while serving in such reserve force, be liable to be called out for duty at any time.
- (5) Notwithstanding anything contained in sub-section (4), the Commandant-General shall have authority to discharge any Home Guard at any time subject to such conditions as may be prescribed, if in his opinion the services of such Home Guard are no longer required.

Reserve force of Home Guards.

5. The Government may constitute a reserve force of Home Guards consisting of persons appointed to it by the Government from among the Home Guards discharged from the service of Home Guards under sub-section (5) of section 4.

Training, functions and duties.

6. (1) The Commandant-General may, at any time, call out a Home Guard for training or to discharge within the State any of the functions or duties as may be assigned in accordance with the provisions of this Act and the rules made thereunder.
- (2) The Commandant of the district may, with the approval of the Commandant-General, at any time call out a Home Guard for training or to discharge any such functions or duties within the district for which the Home Guards have been set up.

Power, protection and control.

7. (1) A Home Guard when called out under section 6 shall have the same powers, privileges and protection as an officer of police appointed under any enactment for the time being in force.
- (2) No prosecution shall be instituted against a Home Guard in respect of anything done or purporting to be done by him in the discharge of his functions or duties as such Home Guard, except with the previous sanction of the Commandant-General.

Control by officers of police force.

8. The Home Guards may be called out in aid of the police force and when they are so called out, they shall be under the control of the officers of the police force in such manner and to such extent as may be prescribed.

*Certificate,
arms etc,
to be deli-
vered up by
persons
ceasing to
be Home
Guards.*

9. (1) Every person, who for any reason ceases to be a Home Guard, shall forthwith deliver up to the Commandant or to such person and at such place as the Commandant may direct, his certificate of appointment or of office and the arms, accoutrements, clothing and other necessities which have been furnished to him as such Home Guard.
- (2) Any Magistrate or, for special reasons which shall be recorded in writing at the time, any police officer not below the rank of Assistant or Deputy Superintendent of Police may issue a warrant to search for and seize, wherever they may be found, any certificate, arms, accoutrements, clothing or other necessities not so delivered up, and every warrant so issued shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1898, by a Police officer or if the Magistrate or the police officer issuing the warrant so directs, by any other person.
- (3) Nothing in this section shall be deemed to apply to any article which under the orders of the Commandant General has become the property of the person to whom the same was furnished.

3 of 1898

*Punishment
for neglect
of duty etc,*

10. (1) The Commandant or the Commandant General shall have authority to suspend, to reduce or to dismiss or to fine not exceeding fifty rupees, any Home Guard under his control, if such Home Guard, on being called out under section 6, without reasonable cause neglects or refuses to obey such order or refuses to discharge his functions and duties as a Home Guard or refuses to obey any other lawful order or direction given to him for the performance of his functions and duties or is found guilty of any misconduct or breach of discipline.
- (2) The Commandant General shall also have authority to dismiss any Home Guards on the ground of conduct which has led to his conviction on a criminal charge.
- (3) When the Commandant or the Commandant General passes after enquiry an order suspending, reducing, dismissing or fining any Home Guard under sub section (1), he shall record such order or cause the same to be recorded together with the reasons therefor and a note of the enquiry made in writing, and no such order shall be passed unless the person concerned has been given an opportunity to be heard in his defence.
- (4) Any Home Guard aggrieved by such order of the Commandant may appeal against that order to the Commandant-General and any Home Guard aggrieved by such order of the Commandant General may appeal against that order to the Government within thirty days of the date on which he was served with notice of the concerned order, and thereupon the Commandant-General or the Government, as the case may be, may pass such orders as he or it thinks fit.
- (5) The Commandant General or the Government may at any time, call for and examine the record of any order passed by the Commandant or Commandant-General, as the case may be, under sub-section (1) for the purpose of satisfying himself or itself as to the legality of propriety of such order and may pass such order in revision with reference thereto as he or it thinks fit.
- (6) Notwithstanding anything contained in any other law —
- (a) any order passed in revision under sub-section (5);
 - (b) subject to such order in revision, any order passed in appeal under sub-section (4); and
 - (c) subject to the orders in revision and appeal aforesaid, any order passed by the Commandant or Commandant-General under sub-section (3),

shall be final.

- (7) Any fine imposed under this section may be recovered in the manner provided by the Code of Criminal Procedure, 1898, for the recovery of fines imposed by a court as if such fine were imposed by a court.

3 of 1898

- (8) Any punishment inflicted on a Home Guard under this section shall be in addition to the penalty to which he is liable under section 11 or any other law for the time being in force.

*Penalties
for breach
of duties
etc.*

11. (1) If any Home Guard, on being called out under section 6 without reasonable excuse neglects or refuses to turn up for training, or duties as a Home Guard or refuses to obey any other lawful order or direction given to him for the performance of his duties and functions, he shall, on conviction, be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.
- (2) If any Home Guard wilfully neglects or refuses to deliver up his certificate of appointment or of office or any other article in accordance with the provisions of sub-section (1) of section 9, he shall, on conviction, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to one hundred rupees, or with both.
- (3) No proceedings shall be instituted in any court under sub-section (1) or sub-section (2) without the previous sanction of the Commandant-General.
- (4) A police officer may arrest without warrant any person who commits an offence punishable under sub-section (1) or sub-section (2).

*Power to
make rules.*

12. (1) The Government may, by notification in Official Gazette, make rules for carrying out the purpose of this Act.
- (2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
- regulating the powers exercisable by the Commandant-General and the Commandant under section 6 and providing for the exercise by any officer of the Home Guard of the said powers;
 - regulating the organisation, appointment, conditions of service, qualifications, functions, duties, discipline, arms, accoutrements, and clothing and uniform of the Home Guards and the manner in which they may be called out for service or be required to undergo any training;
 - providing for the officers who shall sign the certificate of appointment under sub-section (3) of section 4;
 - providing for the exercise of control by officers of the police force over members of the Home Guards when acting in aid of the police force;
 - providing for the conditions under which a Home Guard may be discharged by the Commandant-General;
 - any other matter which is to be or may be prescribed.

*Home
Guards to
be public
servants.*

13. The Home Guards acting under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860. 45 of 1860

*Home
Guard not
disquali-
fied from
election of
State Le-
gislation
or of Local
Bodies.*

14. (1) A Home Guard shall not be disqualified for being chosen as, and for being elected as a member of the State Legislature of Sikkim or of other local bodies merely by reason of the fact that he is a Home Guard.
- (2) Notwithstanding anything to the contrary contained in any other law for the time being in force, a Home Guard shall not be disqualified for being chosen as, and for being a member of any local authority merely by reason of the fact that he is a Home Guard.

- Repeal and saving.* 15. (1) The "HOME GUARDS REGULATION" of 1963 is hereby repealed.
- (2) Notwithstanding such repeal, anything done or any action taken under the said Regulation shall be deemed to have been done or taken under the corresponding provision of this Act.

By order of the Governor.

B. R. Pradhan
Secretary to the Government of Sikkim
F. No. 16(268)LD/ 92.